

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH MICHAEL NUNO,

Defendant and Appellant.

B238009

(Los Angeles County
Super. Ct. No. YA076847)

APPEAL from a judgment of the Superior Court of Los Angeles County. James R. Brandlin, Judge. Affirmed.

Galia Amram Phillips, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

An information, dated June 9, 2010, charged Joseph Michael Nuno with two counts: (1) meeting a person he believed to be a minor for lewd purposes (Pen. Code, § 288.4, subd. (b))¹; and (2) possessing matter depicting a minor engaging in sexual conduct (§ 311.11, subd. (a)). According to the preliminary hearing transcript, Nuno communicated with an undercover police detective, whom he believed to be a 14-year-old girl, in a chat room for more than a month, arranged to meet her and came to the meeting place. A consensual search of Nuno's computer and cellular telephone revealed sexually explicit content and images of underage girls, which the detective believed to constitute child pornography. On December 21, 2010, Nuno pleaded no contest to the charge under section 288.4, subdivision (b). On February 16, 2011, the trial court dismissed the remaining count, suspended imposition of sentence and placed Nuno on formal probation for five years. As conditions of probation, the court directed that Nuno serve one year in the county jail and upon release to maintain residence as approved by his probation officer and to keep his probation officer advised of his residence at all times.

After Nuno's release from jail in early August 2011, Nuno's probation officer filed a report with the trial court on August 26, indicating that Nuno had been arrested on August 23 based on the appearance that he had violated probation by providing the probation officer with certain addresses but staying at a different location. The probation officer requested four weeks to investigate the apparent violations and make recommendations. That same day, the court preliminarily found Nuno in violation of probation, revoked probation, remanded Nuno to custody and set a hearing on September 12 for the probation officer to file a supplemental report. After receiving the supplemental report, the court set a formal probation violation hearing for September 27.

According to the evidence at the probation violation hearing, which took place on September 27, October 21 and November 10, Nuno met with his probation officer on August 9 after his release from jail and told her that he was residing on Hackett Avenue

¹ Statutory references are to the Penal Code.

in Long Beach as of that date, having just moved from East Conant Street in Long Beach. Nuno registered as a sex offender in Long Beach. The probation officer provided Nuno with conditions of probation and asked him to return on August 16 with proof of residence and a living arrangement statement.

On August 16, Nuno returned, informing his probation officer that he no longer could reside at the Hackett Avenue residence, he was now a transient and his church members were deciding where he should stay. The probation officer directed Nuno to go to the Long Beach Police Department and register as a sex offender as a transient. She granted Nuno's request to leave Los Angeles County and go to Cypress in Orange County from August 17 to 22. She asked him to register there as a sex offender and directed him to meet with her on August 24. From August 19 to 22, Nuno left numerous messages for the probation officer, either before or after work hours, telling her that he did not go to Cypress but instead was staying at the Hackett Avenue residence. Nuno reported that his church members were going to take him to Cypress on the evening of August 22 or the morning of August 23. The probation officer attempted to reach Nuno, but he did not answer his telephone or return her call, so she left a message advising him that he could not go to Cypress outside the time period for which she had granted permission.

On August 23, Nuno's probation officer received a telephone call from an officer of the Los Alamitos Police Department, informing her that Nuno had come into the department, which is in Orange County, to register as a sex offender. Nuno told the officer in Los Alamitos that he had stayed at the Don Turf Motel in that city the previous night and would reside there. The officer called the manager of the Don Turf Motel, who reported that Nuno had registered and begun to stay at her motel on August 6 and was paid through September 4. She saw him there on about four occasions. Nuno's room was 20 to 25 yards from and overlooked the pool area, where an officer observed children present. Nuno never mentioned the motel to his probation officer. Nuno was taken into custody.

On August 24, Nuno met with his probation officer. She asked him why he had given her false information by telling her that he was in Long Beach, yet staying in Los Alamitos. Nuno replied that he had no excuse. After Nuno's arrest, the motel manager found magazines in Nuno's room with "dirty pictures of women" and small photographs of children appearing like school pictures. An officer retrieved the materials, which included sexually explicit photographs of women and girls, some of whom identified themselves as teenagers and appeared to be seeking an agent. The officer had concerns about Nuno's staying at the Don Turf Motel because parolees come to the motel on a frequent basis and it is close to schools and parks. Nuno acknowledged to his probation officer that he had videos, photographs and magazines in his motel room but said they were part of his work as a production agent for which he was involved with casting agencies.

The pastor of Nuno's church, testifying on Nuno's behalf, said that he was aware that Nuno had been convicted of a sexual offense and that after Nuno's release from jail he had helped Nuno get a room at the Don Turf Motel and pay for it through church funds. The pastor confirmed that Nuno had stayed at the hotel for a couple weeks. He was not aware that Nuno had failed to inform his probation officer that he was residing at the motel. Nuno told the pastor that his conviction was based on pictures that a girl had sent him of herself naked, that he did not delete the pictures from his cellular telephone and that the girl was underage and related to a police officer. Nuno did not tell the pastor that he had been communicating about sex with someone he believed to be a 14-year-old girl and went to meet her or that he had photographs and videos of minor girls on his computer and cellular telephone. The pastor acknowledged that comparing the details of Nuno's conviction to the information Nuno had given him caused him to believe "there might be some issues" with Nuno's ability to tell the truth. A church member testified that Nuno had admitted to being convicted of a sexual offense, that Nuno had a medical condition requiring treatment and that he had picked Nuno up from his residence at the Don Turf Motel. Other church members knew of Nuno's medical condition, and one helped him register as a sex offender in Long Beach. Nuno also told

this church member that his conviction was based on pictures a girl had sent to his cellular telephone.

Based on the evidence, the trial court found that Nuno had violated probation by “us[ing] subterfuge to hide his location and his whereabouts from his probation officer.” The court revoked probation and sentenced Nuno to state prison for the low term of two years for the violation of section 288.4, subdivision (b). Nuno filed a notice of appeal.

We appointed counsel to represent Nuno in the matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.)

On May 14, 2012, we directed appointed counsel to immediately send the record on this appeal and a copy of the opening brief to Nuno and notified Nuno that within 30 days from the date of the notice he could submit by letter or brief any ground of appeal, contention or argument he wished us to consider. We did not receive a response.

We have examined the entire record and determined that substantial evidence supports the trial court’s decision to revoke probation. We may not reweigh that evidence. We are satisfied that Nuno’s attorney has fully complied with her responsibilities and that no arguable appellate issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.